



California Regional Water Quality Control Board

Central Coast Region



Terry Tamminen
Secretary for
Environmental
Protection

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Arnold Schwarzenegger
Governor

April 29, 2004

Mr. Curt M. Richards
Vice President
Environment, Health and Safety
Olin Corporation
PO Box 248
Charleston, TN 37310-0248

Dear Mr. Richards:

SLIC: 425 TENNANT AVENUE, MORGAN HILL; APRIL 7, 2004, LETTER, REQUEST TO SUPPLY BOTTLED OR ALTERNATIVE WATER AT 6 PPB

Regional Board staff have reviewed your request to confirm that bottled or alternative water is to be provided to well owners whose wells exceed the recently amended Department of Health Services (DHS) perchlorate Action Level. On March 12, 2004, the DHS changed the Action Level from 4 ppb to 6 ppb in response to the Office of Environmental Health Hazard Assessment's establishment of a Public Health Goal (PHG) for perchlorate. The PHG was established at 6 ppb on March 12, 2004.

Currently, Olin is required to supply alternative water to affected well owners whose wells show detections of perchlorate above 4 ppb. This requirement was established in a Regional Board letter sent to Olin on October 18, 2002. In addition, Olin agreed to supply bottled water to affected well owners with detections of perchlorate between 2 and 4 ppb. However, Olin would be allowed to stop bottled water delivery to those affected well owners whose wells tested below 4 ppb for four consecutive quarters.

Olin shall continue to supply bottled water to affected well owners whose wells test over 4 ppb, as outlined in our October 18, 2002, letter. While this standard is 2 ppb lower than the DHS Action Level, we believe there are several factors that warrant further consideration before raising the replacement water level to 6 ppb. First and foremost, alternative water would not be required if the perchlorate had not been discharged. While some wells are below 6 ppb, perchlorate, at any level, is not considered a background constituent of local groundwater. The natural background perchlorate concentration in the Llagas groundwater sub-basin and vicinity is zero. Since the perchlorate discharge has caused a condition of pollution or nuisance and has impacted groundwater beneficial uses, Olin is required to abate potential and actual effects. State Water Resources Control Board Resolution No. 92-49 applies to all cleanup and abatement activities, including providing alternate water supplies. The Resolution requires dischargers to "clean up and abate the effects of discharges in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Id., Section III.G.) A containment plan must provide, if appropriate, for "equivalent alternative water

California Environmental Protection Agency



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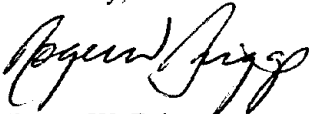
supplies, reimbursement for increased water treatment costs to affected users, and increased costs associated with well modifications." (Id., Section III.H.2.e) Therefore, consideration of natural background is important in determining replacement water levels.

Recent amendments to Water Code section 13304 support this interpretation. As amended by Senate Bill 922, that section now requires replacement water to "have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste." (Ca. Wat. Code §13304, subd. (f).) This Code section suggests that all users are entitled to water that is the equivalent of pre-discharge quality. In enacting S.B. 922, the Legislature considered an amendment that would have narrowed replacement water requirements so that replacement water would only have to meet the following standard: "drinking water deemed suitable by the Department of Health Services (DHS), treated with the best available treatment technology, or if the best available treatment technology does not exist for the contaminant, water treated in a technologically and economically feasible manner based on the action level established by DHS."¹ The Legislature rejected this proposed amendment, suggesting that the Regional Board may require a discharger to abate all impacts of the contamination by eliminating all exposure to the extent feasible, as defined by Resolution No.92-49.

Second, groundwater elevations and quality can change drastically during the wet and dry seasons. Monitoring data demonstrates that it is not uncommon to see perchlorate concentrations in wells that are over 6 ppb drop below 4 ppb at different times during the year. Many wells owners that now receive bottled water only have one or two sample results for their well, which may not reflect seasonal variations in perchlorate concentrations. Lastly, while error in laboratory testing has been minimized, it is possible for actual concentrations to be 6 ppb or above in a well when laboratory results indicate it may be less than six. Acceptable laboratory error is typically plus or minus 20%. Based on that error, a sample result that is 5 ppb could actually be 6 ppb.

At this point, based on current information and concerns, Olin shall continue to supply interim alternative water to affected well owners with perchlorate concentrations above 4 ppb, as directed in our October 18, 2002 letter. Should you wish to discuss this letter or other related matters, please contact David Athey at (805) 542-4644 or Eric Gobler at (805) 549-3467.

Sincerely,



Roger W. Briggs
Executive Officer

cc via E-mail:

Lori Okun
Office of the Chief Counsel
State Water Resources Control Board

Jim Ashcraft
City of Morgan Hill

¹ See Assembly Committee Analysis for July 8, 2003 hearing, at http://www.leginfo.ca.gov/pub/bill/sen/sb_0901-0950/sb_922_cfa_20030707_134529_asm_comm.html.

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